
Amendment 74
Compensation for Reduction in Fair Market Value by
Government Law or Regulation

(This measure requires at least 55 percent of the vote to pass.)

ANALYSIS

Amendment 74 proposes amending the Colorado Constitution to:

- ◆ require the state or a local government to compensate a property owner if a law or regulation reduces the fair market value of his or her property.

Summary and Analysis

Background. Both the Colorado Constitution and state law specify that a government may not take or damage private property without providing compensation to the owner. Procedures in law exist to evaluate and challenge government decisions that lead to takings or cause damages, including asking for public and property owner input and establishing the amount of compensation owed.

Takings and damages. There are three primary ways that the state or a local government can take or damage private property. Governments in Colorado are generally required to compensate a property owner in these cases. The first type of taking is called "eminent domain." A government may take land from a private property owner for a public use or benefit. For example, a government may take land from a property owner to expand a highway. The second type of taking occurs if a government causes damage to private property, whether intentional or accidental. For example, a government may build a road that effectively limits access to an individual's property. The third type of taking is a "regulatory taking," which occurs when a government enacts a law or regulation that deprives a property owner of the use or value of his or her property, even though he or she usually maintains ownership of the property. For example, a government may prohibit a property owner from constructing buildings on his or her property, leaving the property with almost no value.

Changes under Amendment 74. Amendment 74 expands the circumstances under which the state or a local government is required to provide compensation to a property owner for a regulatory taking. Under this measure, a law or regulation that results in any decrease in the fair market value of a property, as opposed to the current standard of an almost total loss in value or use, becomes a regulatory taking. For example, if a government limits natural gas development, an owner of the mineral rights could file a claim for the reduced value of his or her property.

For information on those issue committees that support or oppose the measures on the ballot at the November 6, 2018, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information: <http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

Argument For

- 1) Amendment 74 ensures that when a property's value is harmed by government action, the owner of that property is fairly compensated for the loss. For many Coloradans, property is the most significant asset they own. If a law or regulation causes any loss of value, the property owner should be fairly compensated by the state or a local government. However, current law does not require a government to compensate an owner unless the loss in value to the property is near total.

Argument Against

- 1) Amendment 74 has potentially far-reaching and costly consequences for taxpayers and governments. Under the measure, taxpayers will be responsible for payments to property owners for any loss in property value resulting from a change in law or regulation, regardless of whether the property retains a profitable use. The potential liability for large payouts to private property owners may discourage governments from making decisions that benefit communities and protect vital public resources, such as water, air, and infrastructure.

Estimate of Fiscal Impact

The measure requires that the state or a local government compensate property owners any time a law or regulation reduces the fair market value of private property. The measure will increase state and local expenditures to compensate private property owners as a result of regulatory or legislative action.

TITLE AND TEXT

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado constitution. The text of the measure that will appear in the Colorado constitution below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

Ballot Title:

Shall there be an amendment to the Colorado constitution requiring the government to award just compensation to owners of private property when a government law or regulation reduces the fair market value of the property?

Text of Measure:

Be it Enacted by the People of the State of Colorado:

SECTION 1. In the constitution of the state of Colorado, **amend** section 15 of article II as follows:

Section 15. Taking property for public use—compensation, how ascertained. Private property shall not be taken, or damaged, OR REDUCED IN FAIR MARKET VALUE BY GOVERNMENT LAW OR REGULATION for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.